



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General

Board of Review
P.O. Box 1736
Romney, WV 26757

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

August 1, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 31, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to reduce your Supplemental Nutrition Assistance Program (SNAP) benefits.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility for SNAP is based on current policy and regulations. These regulations provide that individuals which have been convicted of a felony offense which occurred on or after August 23, 1996, which involved possession, use or distribution of a controlled substance as defined by § 802 (6) of the Controlled Substance Act, are found ineligible and excluded permanently from the SNAP assistance group (West Virginia Income Maintenance Manual Chapter 9.1).

The information which was submitted at your hearing revealed that your husband has been convicted of a drug felony after August 23, 1996, and cannot be included in your assistance group.

It is the decision of the State Hearing Officer to uphold the action of the Department in reducing your SNAP benefits from \$181.00 to \$22.00.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young-Chairman, Board of Review
Tera Pendleton-Economic Service Worker

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW**

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1266

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing for ----- . This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on July 31, 2012, on a timely appeal, filed May 15, 2012.

It shall be noted that this hearing was originally scheduled for July 5, 2012, but was continued on the Claimant's request.

II. PROGRAM PURPOSE:

The purpose of the Supplemental Nutrition Assistance Program (SNAP) is to provide an effective means of utilizing the nation's abundance of food "to safeguard the health and well-being of the nation's population and raise levels of nutrition among low-income households." This is accomplished through the issuance of benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

-----, Claimant

Tera Pendleton, Economic Service Worker-Department Representative

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its decision to reduce the Claimant's SNAP benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapter 9.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Computer printout of case comments from May 10, 2012 through May 18, 2012
- D-2 Computer printout of Program Disqualifications
- D-3 Notice of Decision dated May 11, 2012
- D-4 Computer printout of Individual Demographics and Income
- D-5 West Virginia Income Maintenance Manual Chapter 9.1

VII. FINDINGS OF FACT:

- 1) The Claimant is a current recipient of SNAP benefits and completed a recertification interview on May 10, 2012. During the recertification interview, the Claimant indicated that her husband had a previous drug felony conviction.
- 2) The Department confirmed with the United States Marshall's office that the Claimant's husband was convicted of a drug felony offense and sentenced on November 1, 2006. Based on the drug felony conviction, the Claimant's husband was removed from the assistance group.
- 3) On May 11, 2012, the Department issued the Claimant a Notice of Decision (Exhibit D-3) indicating that her SNAP benefits would decrease from \$181.00 to \$22.00 effective June 1, 2012. This exhibit documents that the Claimant's husband was disqualified from the assistance group due to his drug felony conviction.
- 4) The Claimant indicated that she had previously informed the Department that her husband had been convicted of a drug felony. The Claimant did not dispute the calculation of SNAP benefits, but argued that her new benefit amount is inadequate for her household.

5) West Virginia Income Maintenance Manual § 9.1 A(1)g states:

Persons who are excluded by law as found below are ineligible and may not be a separate AG [assistance group]. The periods of ineligibility are as follows:

REASON FOR EXCLUSION

Convicted of a felony offense which occurred on or after 8/23/96 which involved possession, use or distribution of a controlled substance as defined by section 802 (6) of the Controlled Substance Act.

LENGTH OF EXCLUSION

Permanent

6) Code of Federal Regulations – 7CFR § 273.11(m) states:

An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substances Act) shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion.

VIII. CONCLUSIONS OF LAW:

- 1) Policy and federal regulations require that an individual who has been convicted of a felony offense involving possession, use or distribution of a controlled substance after August 23, 1996, are determined ineligible for participation in the SNAP.
- 2) The Claimant's husband was convicted of a drug offense felony on November 1, 2006, and is determined ineligible for SNAP benefits. Therefore, the Department was correct in its decision to reduce SNAP benefits based on eligible assistance group members.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the decision of the Department to reduce the Claimant's monthly SNAP benefit amount from \$181.00 to \$22.00.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of August 2012.

Eric L. Phillips
State Hearing Officer